UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/750,812	12/28/2000	Charles A. Eldering	T733-10	8268

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EXAMINER
MANNING, JOHN

ART UNIT	PAPER NUMBER
2614	

DATE MAILED: 01/06/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

PTO-90C (Rev. 10/03)

	Application No.	Applicant(s)
Office Action Summary	09/750,812	ELDERING ET AL.
	Examiner	Art Unit
	John Manning	2614

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE _3_ MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
  Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) ☐ Responsive to communication(s) filed on _____.
2a) ☒ This action is **FINAL.**   2b) ☐ This action is non-final.
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle,* 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) ☒ Claim(s) _18-34_ is/are pending in the application.
       4a) Of the above claim(s) _____ is/are withdrawn from consideration.
5) ☐ Claim(s) _____ is/are allowed.
6) ☒ Claim(s) _18-34_ is/are rejected.
7) ☐ Claim(s) _____ is/are objected to.
8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9) ☐ The specification is objected to by the Examiner.
10) ☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.
       Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
       Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
       a)☐ All   b)☐ Some *   c)☐ None of:
         1.☐ Certified copies of the priority documents have been received.
         2.☐ Certified copies of the priority documents have been received in Application No. _____.
         3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
       * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08),
   Paper No(s)/Mail Date ~~63700038 40723226~~. 9/9/05 & 11/03/04
4) ☐ Interview Summary (PTO-413)
       Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

Response to Arguments

1.   Applicant's arguments with respect to the amended claims have been considered

but are moot in view of the new ground(s) of rejection.

Claim Rejections - 35 USC § 103

2.   The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all

obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set
> forth in section 102 of this title, if the differences between the subject matter sought to be patented and
> the prior art are such that the subject matter as a whole would have been obvious at the time the
> invention was made to a person having ordinary skill in the art to which said subject matter pertains.
> Patentability shall not be negatived by the manner in which the invention was made.

3.   Claims 18-19, 21, 27, 29, 31, 32 and 34 are rejected under 35 U.S.C. 103(a) as

being unpatentable over Bryant et al. (US Pat No 5,652,615) in view of Unold et al. (US

Pat App Pub No 2002/0055880).

In regard to claim 18, Bryant discloses a system and method of distributing

demographically targeted advertisements (See: Col 5, Lines 4-6; Col 1, Lines 30-40; Col

4, Lines 10-19). The claimed step of "recognizing one or more advertisement

opportunities, each advertisement opportunity having an expected viewership" is met by

Figure 1. "Program segments 310 and 320, according to the invention, can be inserted

or selected at points 110, 111, 120, 131, 140, 150, 160, 170 of the network 100" (Col 5,

Lines 23-25). By inserting the program segments 310 and 320, the system inherently

recognizes the advertisement opportunities, where the advertisement have an expected

viewership. The claimed step of "creating a plurality of subavails based on the

recognized advertisement opportunities, wherein each of the subavails is directed at a

particular target audience group and each subavail is associated with a portion of the

expected viewership of its corresponding advertisement opportunity" is met by Figure 1.

"The segments are adjacently arranged in a temporal manner, substantially without

overlap, and with the base and fill segments alternating" (Col 4, Lines 48-50). "The

different fill segments 320 can be separately identified" (Col 5, Lines 10-11). There are

multiple advertisements for each advertisement opportunity. Each advertisement

opportunities has an associated viewership, where each of the multiple advertisements

make up a portion of the total viewership "In a preferred embodiment of the invention,

the segments 310 and 320 are separately identified as described below. During

distribution of the program, the broadcaster or cable operator can insert segments and

select segments based on the identification of the segments. If the selection is done in

the STB 200, individual customers can be targeted" (Col 5, Lines 34-39). Bryant fails to

explicitly disclose the claimed step of "generating one or more groups of subavails by

aggregating the plurality of subavails from at least two of the advertisement

opportunities, wherein at least one of the groups of subavails has a total expected

viewership greater than or equal to the expected viewership of one of the avails

advertisement opportunities from which the subavails in the at least one croup

originated". Unold teaches "generating one or more groups of subavails by aggregating

the plurality of subavails from at least two of the advertisement opportunities, wherein at

least one of the groups of subavails has a total expected viewership greater than or

equal to the expected viewership of one of the avails advertisement opportunities from

which the subavails in the at least one croup originated" so as to (See Paragrapghs
0063-0064) so as to provide advertisers a convenient method of purchasing multiple
advertisement opportunities. A group of advertisements will have a total viewership that
is greater than or equal to the viewership of any individual advertisement.
Consequently, it would have been obvious to one of ordinary skill in the art to modify
Bryant with "generating one or more groups of subavails by aggregating the plurality of
subavails from at least two of the advertisement opportunities, wherein at least one of
the groups of subavails has a total expected viewership greater than or equal to the
expected viewership of one of the avails advertisement opportunities from which the
subavails in the at least one croup originated" for the stated advantage.

Claim 19 is met by that discussed for claim 18.

In regard to claim 21, Bryant discloses gathering subscriber characteristics of the
target group and determining a correlation between the subscriber group and the
subavails. "The memory buffer 230 can also store data which is a "profile" of the
customer demographics, e.g., age, income, location, etc. The profile can be used to
selectively decode the broadcast signals as explained below" (Col 4, Lines 2-5).

In regard to claim 27, discloses that the subavails are grouped by combining a
plurality of time-sequenced subavails. "The segments are adjacently arranged in a
temporal manner, substantially without overlap, and with the base and fill segments
alternating" (Col 4, Lines 48-50).

In regard to claim 29, Bryant discloses a system and method of distributing
demographically targeted advertisements. The claimed limitation of "an advertisement

opportunities (avails) recognition module configured to recognize avails, each avail

having an expected viewership" is met by Figure 1. "Program segments 310 and 320,

according to the invention, can be inserted or selected at points 110, 111, 120, 131,

140, 150, 160, 170 of the network 100" (Col 5, Lines 23-25). By inserting the program

segments 310 and 320, the system inherently recognizes the advertisement

opportunities. The claimed limitation of "a subavail generation module for creating a

plurality of subavails based on the recognized avails" is met by Figure 1. "The

segments are adjacently arranged in a temporal manner, substantially without overlap,

and with the base and fill segments alternating" (Col 4, Lines 48-50). "The different fill

segments 320 can be separately identified" (Col 5, Lines 10-11). "In a preferred

embodiment of the invention, the segments 310 and 320 are separately identified as

described below. During distribution of the program, the broadcaster or cable operator

can insert segments and select segments based on the identification of the segments.

If the selection is done in the STB 200, individual customers can be targeted" (Col 5,

Lines 34-39). Bryant fails to explicitly disclose the claimed step of "a grouping module

configured to create one or more groups of subavails by aggregating the plurality of

subavails from at least two of the advertisement opportunities, wherein at least one of

the groups of subavails has a total expected viewership greater than or equal to the

expected viewership of one of the advertisement opportunities from which the subavails

in the at least one group originated". Unold teaches "a grouping module configured to

create one or more groups of subavails by aggregating the plurality of subavails from at

least two of the advertisement opportunities, wherein at least one of the groups of

subavails has a total expected viewership greater than or equal to the expected

viewership of one of the advertisement opportunities from which the subavails in the at

least one group originated" so as to (See Paragrapghs 0063-0064) so as to provide

advertisers a convenient method of purchasing multiple advertisement opportunities. A

group of advertisements will have a total viewership that is greater than or equal to the

viewership of any individual advertisement. Consequently, it would have been obvious

to one of ordinary skill in the art to modify Bryant with "a grouping module configured to

create one or more groups of subavails by aggregating the plurality of subavails from at

least two of the advertisement opportunities, wherein at least one of the groups of

subavails has a total expected viewership greater than or equal to the expected

viewership of one of the advertisement opportunities from which the subavails in the at

least one group originated" for the stated advantage.

In regard to claim 31 and 32, Bryant discloses gathering subscriber

characteristics of the target group and determining a correlation between the subscriber

group and the subavails. "The memory buffer 230 can also store data which is a

"profile" of the customer demographics, e.g., age, income, location, etc. The profile can

be used to selectively decode the broadcast signals as explained below" (Col 4, Lines

2-5).

In regard to claim 34, discloses that the subavails are grouped by combining a

plurality of time-sequenced subavails. "The segments are adjacently arranged in a

temporal manner, substantially without overlap, and with the base and fill segments

alternating" (Col 4, Lines 48-50).

4.   Claims 20, 22-26, 28, 30, and 33 are rejected under 35 U.S.C. 103(a) as being

unpatentable over Bryant et al. in view of Unold et al and further in view Eldering (WO

00/33163).

In regard to claim 20, the aforementioned combined teaching fails to explicitly

disclose "receiving one or more bids for each group of subavails and selling the group of

subavails to the highest bidder". Eldering teaches "receiving one or more bids for each

group of subavails and selling the group of subavails to the highest bidder" so as to

maximize revenue for the content provider. "Advertiser 144 transmits a bid contained

within a bid message 730. The bid represents the amount that an advertiser is willing to

pay for a transmission opportunity" (Page 23, Lines 7-9). "Once the content/opportunity

provider 160 has determined an acceptable bid, an acceptance message 740 is sent to

advertiser 144" (Page 23, Lines 20-22). Where acceptable bit is interpreted to be the

highest bid. Consequently, it would have been obvious to one of ordinary skill in the art

to modify the combined teaching with "receiving one or more bids for each group of

subavails and selling the group of subavails to the highest bidder" for the stated

advantage.

In regard to claim 22, the combined teaching fails to explicitly disclose the

"determining pricing for the groups of subavails based on the correlation". Eldering

teaches determining pricing for the groups of subavails based on the correlation so as

to maximize revenue for the content provider. The "price charged for access to

consume 100 by content/opportunity provider varies as a function of the applicability of

the advertisement to consumer 100" (Page 9, Lines 5-8). Consequently, it would have

been obvious to one of ordinary skill in the art to modify the combined teaching with

determining pricing for the groups of subavails based on the correlation so as to

maximize revenue for the content provider.

In regard to claim 23, it is inherent that that the groups of subavails are sold

based on the determined pricing. The "price charged for access to consume 100 by

content/opportunity provider varies as a function of the applicability of the advertisement

to consumer 100" (Page 9, Lines 5-8).

In regard to claim 24, the combined teaching discloses a system and method of

distributing demographically targeted advertisements. Bryant fails to explicitly disclose

the claimed steps of "transmitting the correlation results to one or more prospective

advertisers", "receiving one or more bids for each group of subavails" and "selling the

group of subavails to the highest bidder". The Eldering reference teaches the steps of

"transmitting the correlation results to one or more prospective advertisers", "receiving

one or more bids for each group of subavails" and "selling the group of subavails to the

highest bidder" as show in Figure 7 so as to maximize revenue for the content provider.

"As illustrated in FIG. 7, the combined correlation and pricing/fee message 720 is

received by content/opportunity provider 160, who transmits the correlation result to

advertiser 144" (Page 22, Lines 33-34; Page 23, Lines 1-2). "Advertiser 144 transmits a

bid contained within a bid message 730. The bid represents the amount that an

advertiser is willing to pay for a transmission opportunity. In a preferred embodiment

the bid is calculated by advertiser 144 based on the results of the correlation" (Page 23,

Lines 7-11). The claimed step of "selling the group of subavails to the highest bidder" is

implied. Consequently, it would have been obvious to one of ordinary skill in the art to modify the combined teaching with the steps of "transmitting the correlation results to one or more prospective advertisers", "receiving one or more bids for each group of subavails" and "selling the group of subavails to the highest bidder" so as to maximize revenue for the content provider.

In regard to claim 25, the Bryant discloses a system and method of distributing demographically targeted advertisements. The combined teaching fails to explicitly disclose the claimed steps of "receiving information about one or more advertisements to be placed in the subavails", "characterizing the advertisements" and "correlating the advertisements and the subscriber groups, whereby the advertisements are inserted in the subavails based on the correlation". The Eldering reference teaches the steps of "receiving information about one or more advertisements to be placed in the subavails", "characterizing the advertisements" and "correlating the advertisements and the subscriber groups, whereby the advertisements are inserted in the subavails based on the correlation" as show in Figure 7, so as to maximize revenue for the content provider. The claimed step of "receiving information about one or more advertisements to be placed in the subavails" is met by Figure 7. "Advertiser 144 then transmits an ad characterization 710. The ad characterization can be received by content/opportunity provider 160 or directly by profiler 140" (Page 22, Lines 6-9). The claimed step of "characterizing the advertisements" is met by Figure 7. "Profile140 retrieves consumer characteristics which can be in the form of probabilistic information regarding the consumer, deterministic data regarding the consumer, or product preference

information" (Page 22, Lines 21-24). The claimed step of "correlating the

advertisements and the subscriber groups, whereby the advertisements are inserted in

the subavails based on the correlation" is also met by Figure 7. "Profiler 140 performs a

correlation operation, the results of which are transmitted as a correlation factor or other

correlation result to content/opportunity provider 160. In a preferred embodiment a

pricing/fee arrangement message which represents the price for providing the

advertisement as well as a fee for performing the correlation or accessing the consumer

profile is transmitted along the correlation result" (Page 22, Lines 25-32).

Consequently, it would have been obvious to one of ordinary skill in the art to modify the

combined teaching with the steps of "receiving information about one or more

advertisements to be placed in the subavails", "characterizing the advertisements" and

"correlating the advertisements and the subscriber groups, whereby the advertisements

are inserted in the subavails based on the correlation" so as to maximize revenue for

the content provider.

In regard to claim 26, the combined teaching fails to explicitly disclose that the

subavails are grouped by combining a plurality of subavails across different channels.

However, the examiner takes OFFICIAL NOTICE that it is notoriously well known to

group plurality of advertisements across different channels so as to increase the chance

of the profiled subscriber receiving the targeted advertisement over a channel range.

Consequently, it would have been clearly obvious to one of ordinary skill in the art to

modify the combined teaching to have subavails that are grouped by combining a

plurality of subavails across different channels so as to increase the chance of the profiled subscriber receiving the targeted advertisement over a channel range.

In regard to claim 28, the combined teaching fails to explicitly disclose that the subavails are gathered from the same channel. However, the examiner takes OFFICIAL NOTICE that it is notoriously well known to have advertisements that are gathered from the same channel so as to increase the chance of the profiled subscriber receiving the targeted advertisement over time. Consequently, it would have been clearly obvious to one of ordinary skill in the art to modify the combined teaching to have subavails that are gathered from the same channel so as to increase the chance of the profiled subscriber receiving the targeted advertisement over time.

In regard to claim 30, the combined teaching discloses a system and method of distributing demographically targeted advertisements. The combined teaching fails to explicitly disclose "selling the groups of subavails to one or more prospective advertisers". Eldering teaches selling advertisements opportunities to one or more advertiser so as to generate revenue for the content provider. "In a preferred embodiment of the present invention, a pricing policy can be defined. The content/opportunity provider 160 can charge advertiser 144 for access to consumer 100 during an opportunity" (Page 9, Lines 1-4). Consequently, it would have been obvious to one of ordinary skill in the art to modify the combined teaching to sell advertisements opportunities to one or more advertiser so as to generate revenue for the content provider.

In regard to claim 33, the combined teaching fails to explicitly disclose that the subavails are grouped by combining a plurality of subavails across different channels. However, the examiner takes OFFICIAL NOTICE that it is notoriously well known to group plurality of advertisements across different channels so as to increase the chance of the profiled subscriber receiving the targeted advertisement over a channel range. Consequently, it would have been clearly obvious to one of ordinary skill in the art to modify the combined teaching to have subavails that are grouped by combining a plurality of subavails across different channels so as to increase the chance of the profiled subscriber receiving the targeted advertisement over a channel range.

Conclusion

5.   The prior art made of record and not relied upon is considered pertinent to applicant's disclosure as follows:

- Flickinger (US Pat App Pub No 2001/0032333)

- Yen et al. (US Pat App Pub No 2002/0073419)

- Schmelzer et al. (US Pat No 5,424,770).

6.   Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within

TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

7.   Any inquiry concerning this communication or earlier communications from the examiner should be directed to John Manning whose telephone number is 571-272-7352. The examiner can normally be reached on M-F: 9:00 - 5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John W. Miller can be reached on 571-272-7353. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

JM
December 19, 2005

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